



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### PIEDMONT REGIONAL OFFICE

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L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

Gerard Seeley, Jr.  
Regional Director

## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO RIVERTON ASSOCIATES Virginia Water Protection Permit No. WP3-04-1157**

### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 , 62.1-44.15(8a) and (8d), and §62.1-44.34:20 between the State Water Control Board and Riverton Associates, for the purpose of resolving certain violations of environmental law and regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.

6. “Permit” means Virginia Water Protection (VWP) Permit No WP3-04-1157, issued to Riverton Associates, which became effective September 23, 2004, and expires on September 22, 2009.
7. “Phase I” means the Winterfield Road Relocation Project, which is located in Powhatan County on an 80-acre site at the southeast quadrant of the intersection of State Route 711 (Huguenot Trail) and State Route 714 (Winterfield Road).
8. “Phase II” means the remaining commercial and residential development of the 80-acre site at the southeast quadrant of the intersection of State Route 711 (Huguenot Trail) and State Route 714 (Winterfield Road).
9. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
10. “Riverton Associates” means Riverton Associates, a general partnership between G.B.S. Holding, Ltd. and George B. Sowers, Jr., created by a Partnership Agreement executed on December 24, 1994 and amended on December 31, 1999, and recorded in the Clerk’s Office of the Circuit Court of Chesterfield County, in Book 22, Page 0756.
11. “Application” means Joint Permit Application No. WP4-05-1512, which was received by the Department on March 24, 2005.
12. “NOV” means Notice of Violation.

### **SECTION C: Findings of Fact and Conclusions of Law**

- 1) The Winterfield Road Relocation Project (“Phase I”) is located in Powhatan County on an 80-acre site in the southeast quadrant of the intersection of State Route 711 (Huguenot Trail) and State Route 714 (Winterfield Road). The Project is being completed by Riverton Associates and comprises the first phase of the overall development of the site.
- 2) Virginia Water Protection Permit No. WP3-04-1157 (“Permit”) was issued to Riverton Associates on September 23, 2004. The Permit authorizes impacts to 0.31 acres of wetlands and 255 linear feet of stream channel associated with Phase I.
- 3) On March 24, 2005, the Department received an incomplete Joint Permit Application (No. WP4-05-1512) from Riverton Associates. The Application requested authorization under a VWP WP4 General Permit to impact State waters and wetlands in order to complete the commercial and residential development of the site (“Phase II”).

- 4) On June 25, 2005, DEQ staff conducted an inspection of the Phase I and Phase II sites:
  - a. Phase I was under construction. DEQ had received neither the 10-day advance notification of construction commencement, as required by Part II.E.3 of the VWP Permit, nor any construction monitoring reports, as required by Parts II.D.1 and II.E. 3 of the Permit.
  - b. Unimpacted wetlands within 50 feet of construction activity had not been flagged, as required by Part I.C.10 of the Permit.
  - c. Erosion and sediment ("E&S") controls were not installed in some locations and in others were inadequate or unmaintained. Part I.C.5 of the Permit requires that E&S Controls be installed prior to clearing and grading and maintained in good working order.
  - d. Areas of Phase II were under construction. Approximately 0.12 acre of forested wetlands and 120 linear feet of stream channel that were proposed for impact in the Phase II Application were already impacted by clearing and grubbing. The Phase II permit has not yet been issued, and the Application is incomplete. Va. Code §62.1-44.15:5.D and 9 VAC 25-210-50.A of the VWP Permit Regulation prohibit such activities unless conducted in compliance with a VWP Permit.
- 5) On September 22, 2005, DEQ staff conducted a second inspection of the site. In addition to those items described in Paragraph 4, staff observed the following:
  - a. Continued lack of adequate E&S controls resulted in excessive sedimentation in an additional 50 linear feet of stream channel. Staff also observed a large mulch pile immediately adjacent to a stream channel. No E&S controls or other measures were in place to prevent the discharge of mulch or leachate into the stream. Part I.C.5 of the Permit requires that E&S Controls be installed prior to clearing and grading and maintained in good working order.
  - b. Culverts and/or fill were placed in the impacted areas described in Paragraph 4.d so that site development could progress to surrounding upland areas.
- 6) On December 13, 2005, DEQ staff conducted a third inspection of the site. In addition to those observed items described in Paragraphs 4 and 5, above, staff observed that continued lack of appropriate E&S controls had resulted in up to 14 inches of sediment deposited over an additional 0.11 acre of forested wetlands and 80 linear feet of stream channel.
- 7) A file review indicated that documentation of the permittee's contribution to the Virginia Aquatic Resources Trust Fund had not been received by DEQ. The documentation was due by October 23, 2004 and required by Part II.A.2 of the Permit.
- 8) Notice of Violation ("NOV") No. 05-PRO-12-201 was issued on December 15, 2005 regarding the issues described in Paragraphs 4, 5, 6 and 7, above.
- 9) A meeting to discuss the NOV was held on the site on December 28, 2005. During the meeting, Staff observed additional areas of excessive sedimentation over approximately 1,060 linear feet of Roberts Branch, which resulted from continued lack of E&S controls.

Staff gave Riverton Associates' representatives suggestions for improvement of the site, many of which were immediately implemented.

- 10) A follow-up meeting was held on the site on January 4, 2006. Interim E&S controls were in place at the time of the meeting. DEQ staff and Riverton Associates' representatives discussed procedures and a schedule for restoration of the areas impacted by excessive sedimentation.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d) and §62.1-44.34:20, orders Riverton Associates, and Riverton Associates agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Riverton Associates, and Riverton Associates voluntarily agrees, to pay a civil charge of \$25,195 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this Order and shall note the Federal Identification Number for Riverton Associates. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Riverton Associates, for good cause shown by the Riverton Associates, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violations issued to Riverton Associates by DEQ on December 15, 2005. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Project as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Riverton Associates admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. Riverton Associates consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Riverton Associates declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Riverton Associates to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Riverton Associates shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Riverton Associates shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Riverton Associates shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

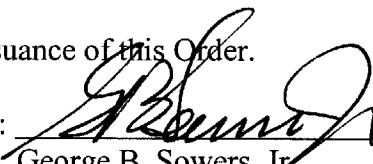
Failure to so notify the Regional Director within 24 hours of learning of any condition above, which Riverton Associates intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the Riverton Associates. Notwithstanding the foregoing, Riverton Associates agrees to be bound by any compliance date which precedes the effective date of this Order.
13. This Order shall continue in effect until:
  - a. Riverton Associates petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - b. The Director or Board terminates the Order in his or its sole discretion upon 30 days notice to the Riverton Associates.Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Riverton Associates from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Riverton Associates voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 2<sup>nd</sup> day of June, 2006.

  
\_\_\_\_\_  
David K. Paylor, Director  
Department of Environmental Quality

Riverton Associates voluntarily agrees to the issuance of this Order.

By:   
\_\_\_\_\_  
George B. Sowers, Jr.  
Riverton Associates

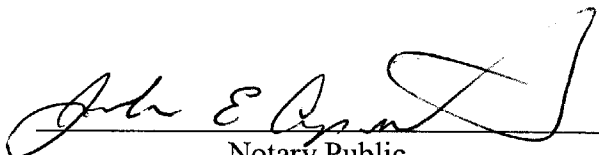
Date: 4/10/06

Commonwealth of Virginia

City/County of Chesterfield

The foregoing document was signed and acknowledged before me this 10<sup>th</sup> day of  
April, 2006, by George B. Sowers, Jr., who is  
(name)

General Manager of Riverton Associates, on behalf of Riverton Associates.  
(title)

  
Notary Public

My commission expires: 11-30-06

## APPENDIX A

1. **No later than April 3, 2006**, Riverton Associates shall obtain a review of the erosion and sediment controls and stormwater management techniques that are currently in place on the site. The review shall be conducted by a Professional Engineer licensed in the Commonwealth of Virginia and shall include an engineering analysis and calculations to determine if the installed measures meet the criteria found in the 3<sup>rd</sup> edition of the Virginia Erosion and Sediment Control Handbook and §4 VAC 50-30-40 *et seq.* (Minimum Standards) of the Virginia Erosion and Sediment Control Regulations. The analysis shall consider current field conditions and future field conditions, including topography, drainage areas, runoff characteristics, and receiving streams/wetlands. Where the analysis and/or calculations indicate that the currently installed measures are inadequate, the measures shall be augmented as necessary to meet the standards listed above.
  - a. A report of the analysis and recommendations, certified by a Professional Engineer, shall be submitted such that it is received by the Department no later than **April 10, 2006**.
  - b. All additional measures recommended in the report shall be installed no later than **April 17, 2006**.
2. Riverton Associates shall complete the restoration of all wetlands and streams adversely impacted by sedimentation no later than **April 7, 2006**. Restoration shall be conducted in accordance with the plan dated January 12, 2006 and received on January 17, 2006. Mechanized equipment shall not enter State waters or wetlands at any time during the restoration, except as authorized in advance in writing by the Department.
3. **No later than April 10, 2006**, Riverton Associates shall submit a plan to monitor restored wetlands and streams to ensure their long term viability. The plan shall include, at minimum, a monitoring schedule, photographic stations, vegetative monitoring stations and methodology, methodology to measure any new sediment deposition, and success criteria for the wetland and stream restoration areas. Monitoring shall be conducted for the life of construction activity within the applicable drainage areas, in accordance with the approved plan and schedule, and reports shall be submitted no later than December 31<sup>st</sup> of the monitoring year. Any alterations or maintenance conducted on the restored areas shall be reported.
  - a. If the restored wetland or stream areas fail to meet the specified success criteria during any monitoring year other than the final monitoring year, the reasons for this failure shall be determined and a corrective action plan (including proposed actions, a schedule, and a monitoring plan) shall be submitted to DEQ for approval with or before that year's monitoring report. The approved corrective action plan shall be implemented by the permittee in accordance with the approved schedule.



- b. If the restored wetland or stream areas fail to meet the specified success criteria during the final monitoring year, Riverton Associates shall submit a mitigation plan for the wetlands and streams that were impacted by sedimentation and not successfully restored. The plan shall be submitted with the yearly monitoring report required by Paragraph 3. Plan content and implementation shall be in accordance with 9 VAC 25-690-60.B.16 and the “Part II - Compensation, Monitoring, and Reporting” requirements of the VWP permit issued for the project. Proof of purchase of mitigation bank credits or contribution to an in-lieu fee fund shall be submitted within 60 days of plan approval by DEQ.
4. Riverton Associates shall mitigate for the unauthorized impacts to 0.12 acre of forested wetlands and 120 linear feet of stream associated with Phase II. Mitigation shall consist of the purchase of 0.24 wetland credits and 120 stream mitigation credits from an approved mitigation bank, or if a mitigation bank is unavailable and DEQ agrees in advance, a donation to the Virginia Aquatic Resources Trust Fund (“Trust Fund”) of an amount quoted by the Fund as equivalent mitigation. Mitigation shall be in accordance with the applicable provisions of provisions of § 62.1- 44.15:5 E of the Code of Virginia and 9 VAC 25-690-70. If a mitigation bank is used, credits shall be purchased **no later than April 15, 2006**, and proof of such purchase shall be submitted to the Department **no later than April 30, 2006**. If a donation to the Trust Fund is used, Riverton Associates shall submit all documentation necessary to obtain a quote for the donation amount **no later than April 10, 2006**. The donation shall be made **no later than 10 days after** the quote from the Trust Fund is received by Riverton Associates or its representative. Documentation of the donation shall be submitted to DEQ **no later than 20 days after** the quote from the Trust Fund is received by Riverton Associates or its representative.
5. **No later than June 1, 2006**, Riverton Associates shall submit all information deemed necessary by DEQ to complete Joint Permit Application No. WP4-05-1512. The application shall include a request for after-the-fact authorization of the already-completed impacts to 0.12 acre of forested wetlands and 120 linear feet of stream associated with Phase II.
6. **All requirements of Appendix A of this Order shall be submitted to:**

Allison C. Dunaway  
Enforcement Specialist, Sr.  
VA DEQ – Piedmont Regional Office  
4949-A Cox Road  
Glen Allen, Virginia 23060  
Phone: (804) 527-5015  
Fax: (804) 527-5106  
Email: [acdunaway@deq.virginia.gov](mailto:acdunaway@deq.virginia.gov)